

IN The  
United States District Court  
District of N.H.

Petitioner Dominic Ali

v.

Respondent State of N.H.

Civil No: 12-cv-185-JL

Petitioner motion to vacate Enhance  
Indictment

NOW COMES, Dominic Ali, sui juris, respectfully  
request this Honorable Court to grant this  
motion for the following reason states below;

Petitioner has a writ of habeas corpus  
doc No 1) Filed pursuant to 28 U.S.C. 2254  
with this Court, claiming violation of his  
Constitutional Rights state and Federal.

Before this Court, is petitioner's motion  
to amend doc No 29) his 2254 petition, which  
challenges the validity of his 2008, states  
Court conviction and sentence for the  
Second 2nd degree assault, and illegal enhancement  
by consideration of prior unconstitutionally  
obtained No 10 Contender conviction.



This Honorable Court requested that petitioner file document from the States Court record which demonstrate that he has exhausted his both claims, 10 and 11, in States Court proceeding challenging his 2008, conviction and sentence. The petitioner have obtains a final decision from the Goffstown District Court, Coos County Superior Court and the N.H. Supreme Court, final decision and would file these document with this Court.

Petitioner has filed a motion to dismiss States indictment, sec; No 36) as to which the respondent Warden has not filed an objection. At that time neither the Feb 2, 2009, sentencing hearing transcript, nor the (PST) are made for this Court's record; to resolve claim 5) This Court requested that petitioner to refile when these document are made part of this Court records.

This Court requested that respondent, Warden within 30 days to furnish and serve petitioner with the following:

- Complete transcript of the Feb 2, 2009, Sentencing hearing in Ali's 2008 conviction.
- Complete transcript of the Sept 28, 2004, plea and sentencing proceeding in Ali's 2004, conviction.



- Complete transcript of the Feb 15, 2011, evidentiary hearing on Ali's motion to withdraw the no-basis plea in the 2004 conviction;
- Sentencing memoranda filed by the state and the defendant in the 2002 criminal case and;
- And such other document derived from the state court record that are relevant to this Court's consideration of claims 4(g) and 5.

In or about April 14, 2014, petitioner filed a motion with this Court requesting type written transcript and petitioner's request were granted. The only document petitioner doesn't have at this time, is the PSI report by the probation officer.

Ali's petition 254, in this Court challenging the validity of his Class A felony conviction on multiple grounds that include claims (4g and 5)

NHPD Attorneys Helen Sullivan and Aileen O'Connell provided ineffective assistance of Counsel at trial and in pretrial proceedings, in violation of Ali's 6th Amendment rights in that they:



G. Failed to investigate whether the 2004 conviction which provided the basis for enhancing the 2008, Felony Charge, had been obtained in violation of Ali's Constitutional rights.

### BACKGROUND

The petitioner was arrested on Feb 4, 2008, and was charged with domestic violence related crime allege simple assault and False imprisonment, and obstruction to report a crime. All of these charges were misdemeanors offenses. After the State reviewing petitioner's records, it discover a conviction of a protective order contrary to RSA 173-B:9, III on 9/28/2004, the State upgraded petitioner's indictment simple assault to felonies.

In or about Feb. 2008, petitioner was assign two incompetent Attornies from the N.H. P.D. Office to represent him in this case.

The State with full recklessness and disregard with discriminatory conduct motivated by racial bias divide single indictment into multiple count. The Manchester District Court dismissed one of petitioner's Felony indictment. Then the State reindicted petitioner to the N.H. Superior Court, North, with the same full recklessness and its primary purpose or effect is to appeal to the "GRAND JURORS" sympathies or trigger other misgivings of fear; State v. MacLeod, 141 N.H. 427 (2006)



human action that may cause the jury and grand jurors to base its decision on something other than the established proposition in this case.

### LEGAL ARGUMENT

BEFORE TRIAL, petitioner advised trial Counsel's to investigate his prior Nolo contendere Conviction by the NH Goffstown District Court, that petitioner didn't know about till his indictment of 2008, arrest. petitioner advise trial Counsel's that his plea was not intelligently and voluntary made. And the reason that incompetent Counsel from the NHPD Office Mr. Ryan Norwood, esq. advised the petitioner that the Nolo contendere plea "means nothing". One Counsel withdraw from the petitioner's case, then from that same office, attorney O'Connell, esq. was assign with Ms. Sullivan, esq. as petitioner's trial Counsel's. See, United States v. Wolak, 510 F.2d 164 (6th Cir. 1975)

Trial Counsel's mad up excuses and never requested a hearing or investigate how the petitioner was convicted. Like the petitioner did in his own, on Feb 15, 2011, requesting his nolo conviction be vacated. With respect to this Court opinion, petitioner's request constitute a Conflict of INTERESTS and the reason that, the Goffstown District Court appointed a "NHPD" and they declined to represent petitioner on his Feb 15, 2011, hearing to vacate his Nolo conviction. See, Pate v. Robinson, 383 U.S. 375,

5 of 24 1966). See; State v. Venle, 154 N.H. 730 (2007).



The Supreme Court found that use of the comparative grounds approach was arbitrary and capricious that violated the Administrative Procedure Act, 5 U.S.C. 706(2)(4)

After the trial Court (Gillian Abramson) denied petitioner motion to dismissed indictment, prior to trial, petitioner- incompetent trial Counsel's signed a stipulation removing the Post of 2004 conviction of Restoring order from the Jury consideration. And allowing the bias Court (Janner Berry) to make a finding on that issue. see; *Leocal v. Ashcroft*, 543 U.S. 1 (2004). Also; *United States v. Edwards-Francis*, 885 F.2d 1002, (2d Cir 1989).

## Criminal Law and Procedure: Guilty Plea Knowingly and intelligently.

A guilty plea must be knowingly, intelligently and voluntary to be valid. See; *Boykin v. Alabama*, 395 U.S. 238 (1969). citation Omitted.

Thus petitioner must waives his rights and fully understand the element of the offense to which he's pleading, the direct consequence of the plea and the rights he's forfeiting. See; *State v. Lopez*, 156 N.H. 193 (2000) 931, A.2d 1186 (2007). Also, *State v. Offner*, 156 N.H. 435, 437, 938, A.2d 879 (2007). See Rule 11. Id. at 243-44, 89 S.Ct. at 1112. *Wade v. Wainwright*, 420 F.2d 898 (5th Cir 1969). And violation of Fed Rule: 11 (b)(1) Fed. R. crim P.



Counsel failed to explain to give petitioner notice of what he is being ask to admits or what is the outcome. Hands down, there is a reasonable probability that had not been for Counsel faulty advice about the true meaning of the law, petitioner would not have plea Nolo contendere. Because the petitioner is innocent of the charge crime and was found not guilty of the basis or the fundamental principle of issuance to the protective order. See; *Fillmore v. Fillmore*, 147 NH-283 (2001). Also, Counsel would have a chance to cross-examine the States witness who committed perjury on May 21, 2004. See; attachment (4 of 70 5 of 70, 7 of 70) Original copies are made part of this Court record. See; *People v. Whitfield*, 217 Ill. 2d 177, 183, 298, Ill. Dec 545, 840, N.E. 2d 658 Ill. 2005) *United States v. Vorn*, 535 U.S. 55, 58, 122 S.Ct. 1043, L.Ed. 2d, 90 (2002) *McCarthy v. United States*, 394 U.S. 459, S.Ct. L.Ed. 2d, 410 (1969) And *United States v. Noriega-Millan*, 110 F.3d 945 11th Cir (2000).

petitioner advised this Court more than once, that part of the hearing on 9/28/04 are missing. There was Counsel's advised and the trial Court threats. And petitioner believes it was the Honorable Court (Michael J. Ryan) See; *Boudy v. United States*, 397 U.S. 742, 25, L.Ed. 2d 747, 90. S.Ct. 463 (1970).



who abuses his discretion and violated the CIA Act. The Court failed to offer the petitioner an interpreter during his hearing on Sept 28, 2004, that violates the 5th Amendment. Pursuant to the CIA Act, the petitioner is entitled to an interpreter.

The trial court had the best position to assess the petitioner and had usage comfort level and intelligibility after having knowing that petitioner's language is other than English.

During the hearing on 9/28/04, petitioner's Counsel told trial Court that "Mr. Ali is from the Sudan and that he did not know how serious his charges are" but told petitioner is charges "mean nothing" That's when the trial Court threatened petitioner. The lack of interpreter during the proceeding inhibited petitioner comprehension of the plea and communication with Counsel. The Court failed to seek to measure petitioner's comparative ability to speak good English or understand the English language because ambiguity of the language in the plea. See; *Margalli-Ober v. INS*, 43 F.3d 345 (8th Cir 1994); *Borsley v. United States*, 523 U.S. 614, 5 Ct. L.Ed. 2d 828 (1998) -

## IMMIGRATION CONSEQUENCE

For good Cause shown.

Failure of petitioner's Counsel to advise about immigration consequence before taken a plea violates petitioner's 6th Amendment. Petitioner states that decision to reject the plea bargain would have been rational under the

8 of 20 circumstances = See; *Padilla v. Kentucky*, 130 S. Ct. 1473 L.Ed. 2d 284 (2010).



Given close connection between deportation and criminal conviction a continuance for pre-conviction relief which will render one who is eligible for additional forms of relief surely must be good cause. Continuance to obtain post-conviction relief are within the sound discretion of the Immigration Court if good cause is shown. See: Matter of Luviano, 121 Imm Dec 235 (BIA 1996) Matter of E., 20 Imm Dec 529 (BIA 1992) Matter of Silva Rodriguez, 20 Imm Dec 448 (BIA 1992) Matter of Perez-Andrade, 19 Imm Dec 433 (BIA 1987) and Chavez-Perez v. Ashcroft, 386 F.3d 1284 (9th Cir. 2004) Pela Cruz v. INS, 951 F.2d 226 (9th Cir. 1991).

The Supreme Court pointed out, with respect to this Court, in Pacilla v. Kentucky, "deportation as a consequence of a criminal conviction is because of its close connection to the criminal process, uniquely difficult to classify as either a direct or a collateral consequence" at 130 S. Ct. 1473, 148 (2010). Also, United States v. Orozco, 645 F.3d 630 (2011). Further more, criminal conviction and the penalty of deportation are closely enmeshed and "as a matter of Federal Law, deportation is an integral part - indeed sometimes the most important part of penalty that may be imposed on non citizen, petitioner who pled guilty to specified crimes" Id at 130 S. Ct. 1473 1482 (2010). See: EX(B1)



According to Immigration laws, Petitioner's record of convictions demonstrated a crime that in fact involved moral turpitude at 704. These includes document such as the indictment the judgment of conviction, jury instruction, a signed guilty plea and plea transcript. See 3 steps approach by Immigration Court, Silver-Trenna at 696 704. Petitioner criminal conviction are Disorderly conduct, 2006, violation of protective order 2004, and his second degree assault in 2008. which is Cinf conduct. The DHS or ICE uses three states criminal conviction that has to be in different proceeding to find ground for deportation, plus the extent term of imprisonment.

In this case, in 9/28/2004, Counsel never advise petitioner about any immigration consequences or that his guilty plea could be use to enhance any criminal charges Counsel advise that "Nolo contendere" petitioner would have nonetheless rolled the dice and gone to trial which is a 100% dismissal of indictment which petitioner already have done in the same case and victim at the Manchester District Court. on or about May 21, 2004. in the hope of avoiding removal.

These are facts that trial Counsel's failed to investigate upon Petitioner's requests, before his trial by jury in Sept 25, 26, 2008. See; Cuyler v. Sullivan, 466 U.S. 335, 100 S.Ct. 1708, 64 L.Ed. 2d 333 (1980). U.S. Const. Amendments VI and XIV Also, 10 of 24 Woods v. Georgia, 450 U.S. 261, 57 L.Ed 2d 220 (1981).



## Sentencing, Appeal and Post-conviction Proceeding

Please be advised, that petitioner never had the sentencing memorandum before sentencing or after. Petitioner requested trial Counsel and sentencing Counsel copy of original case file in or about 2013. The only time petitioner notice that their was sentencing memorandum been filed on his behalf is during sentencing Feb 2, 2009, where the trial Court him self didn't have a copy! See: United States v. Clark, 139 F.3d 485, 490. (5th Cir 1998).

Petitioner claim that his Court appointed Counsel for sentencing hearing violated Alais 6th Amendment rights in that claim 5 (a) (b) (c) and (d)

Counsel was constitutionally ineffective for failing to protect petitioners request that his trial Counsel's were ineffective for failing to challenge the conviction of protective order, that increase petitioners sentence by 7 years. Failing to file petitioner request for ineffective assistance and ignored petitioners wishes, when conflict of interest existed. And failure of trial Counsel's to seek a favorable plea agreement for the petitioner. United States v. Borrero-Isaza, 887 F.2d 1349, 1352 944 ci- 1989) Borin v. Kaine,



Attorney Anthony L. Interocaso, failed to subject prosecution to the meaningful adversarial challenge. See; U.S. v. Jones, 270 F.3d 554 (CA 8 Cir. 2001). Not been perpair for sentencing for more than three months, Counsel failed to provide his own sentencing guideline computation or pos-conviction specialist need to the court early enough to consider in relation to the (PSI) report, that never been given to the petitioner. See; U.S. v. Davis, 151 F.3d 1325 (CA Cir. 11 (1981). Counsel gave incorrect statement during sentencing hearing that petitioner been through the probation report. See; T. 6, 14. Because petitioner till this day don't know what the probation report look like.

As this Honorable Court would notice that, the police version of probation report which in this case is the State, it contains allegation relating to the charges that were dismissed at trial and which petitioner was found not guilty. The presentencing report also indicates that petitioner was convicted of two violation of restraining order. And that was the basis for the class A Felony indictment that unlawfully brought against the petitioner. And that was harassment, confusion, and unfair prejudice. See; T. 6, 7-25, T. 7, 3.

12 of 24 make no mistake to Interocaso incompetent assistance, filing petitioner's notice of Appeal see; Tucker v. United States, U.S. Supreme Court "Fundament principle of due process prohibits the consideration of prior conviction or unconstitutionally obtained conviction in sentencing."



that did not involve claim of ineffective assistance of Counsel by trial Counsel, because he himself was incompetent and only interested in a fee. He advised the petitioner that "five years in prison, like a walk in the park". The bench of denial of petitioner's Constitutional Rights, and resting on the perceived weakness of the prosecution case and that continue through Appeal.

## Denial of Constitutional Rights States and Federal

The six Amendments entitle the petitioner a right to assistance of Counsel and the due process of law under the fourteenth Amendments and part (1) article (15) of the State of NH Constitution.

The Court must judge the reasonableness of Counsel on the fact to the particular case. A petitioner claiming ineffective assistance of Counsel must show (1) that Counsel representation fell below an objective standard of reasonableness (2) that Counsel deficient performance prejudiced his case see: Strickland v. Washington, 466 U.S. 668 (L.Ed. 2d (1984), United States v. Artero, 411 F.3d 315, (2d Cir. 2005).



The second part of Strickland requires a criminal defendant to show prejudice from Counsel deficient performance for the purpose of establishing ineffective Assistance of Counsel under Federal law, the 6th Amend, where such claim involves Counsel performance during the course of legal proceeding, either at trial or Appeal.

A) showing how specific errors of Counsel undermined the reliability of a finding of guilt, or

B) Demonstrating that Counsel errors actually had an adverse effect on the defendant case.

From the get go, after petitioner found out that his indictment was enhanced to felonies due to his Sept 28, 2004, conviction of protective order from a plea that was not knowingly, intelligently and voluntarily made. Not fully understood the element of the offense to which petitioner pleading. Because an Attorney from the New Hampshire Public Defenders Office Rayn NorWoodberg advised petitioner that the Nolo Contender "meant nothing" and failure to advise petitioner about Immigration consequence.



Petitioner had zero trust in his trial Counsel's coming from that same Office. He was prepare for prison before he was convicted.

The Court of Appeals agrees, that the six Amendment impose on Counsel a duty to investigate. Because a reasonable effective assistance must be based on professional decision and informed legal choices can be made only after investigation of options.

The Court observed that Counsel investigatory must be assessed in the light of the information known at the time of the decision not in the hindsight, And the amount of potential investigation that is reasonable defense precise measurement.

please be advised that, it took petitioner 4 years to know that he was convicted of Nolo contendere and the outer limits of penalty which he could suffer upon entering plea of Nolo and 11 years of its consequences, that is Immigration now - petitioner suffered 30 months of imprisonment because that single Nolo conviction. 2 years behind the walls of prisons because of Immigration hold since 2008, 6 months at the U.S. Immigration and Custom Enforcement, Because it found one more ground for deportation that is conviction of the protective order, Sept 28, 2004 "Cint".



Defense Counsel's performance fell well below an objective standard of reasonableness for counsel in a criminal case, for failure to investigate the Nolo Contender conviction.

Challenging this conviction will constitute a conflict of interest with the "NHPS" Office. See; *United States v. Sagarin-Rivara*, 473 F.3d 381 (1st Cir. 2007).

So, their Hon. Trial Counsel's unsuccessfully filed two motions challenging the 2004 Nolo conviction and the Court denies these motions. Then incompetent trial counsel's signed a stipulation removing the fact of 2004 Nolo conviction from the jury consideration, when in fact it goes to sentencing and that was the District Attorney confusion ploy.

Petitioner who pleads guilty in reliance on his attorney's "gross mischaracterization of the likely outcome" of his case may be entitled to withdraw the pleas on ineffective assistance of counsel. See; *Jaen v. Sum*, 800 F.2d 864, 865, (9th Cir. 1994).

Petitioner states that he would not have pled Nolo or guilty whicher the Court finding, had he been correctly advise of the statutory maximum or sentence penalty provided by law. Petitioner would not have pled Nolo Contender had the trial Court or Counsel advised him that he will be subject to 7 years of jail time as a consequence of his plea.

See; *United States v. Colon-Torres*, 382 F.3d 76 (1st Cir. 2004) and Immigration.



it's axiomatic that a petitioner may waive his right to conflict-free representation. United States v. Garcia, 517 F.2d 272, (5th Cir. 1975). However, the effective of waiver of a constitutional right requires that the waiver must be an "intentional relinquishment of or abandonment of known rights" Garcia, 517 F.2d at 276, quoting Johnson v. Zerbst, 304 U.S. 458 (1938).

First, petitioner must be told there is a conflict of interest. Second, must be informed of possible consequences to his defense that a conflict may have and finally, petitioner must be informed of his right to other Counsel. Duncan v. Alabama, 881 F.2d 1013 (11th Cir 1989).

### Adverse Performance

The conflict adversely affected Counsel's performance because trial Counsel's;

- Failure to advise the trial Court that they were burdened with a conflict of interest.
- Failure to file petitioner's request motion to withdraw Nolo Contender plea that is tendered solely as a result of faulty legal advice that is a miscarriage of justice by an attorney from same firm as trial Counsel's.

- Induce and manipulated petitioner into signing stipulation removing the foot of the Nolo conviction 2004, when it goes to sentencing after trial.

- Failure to investigate or discovery potentially exculpatory evidence that would have led trial Counsel to reject signing stipulation because the State failed to disclose Brady material that proved petitioner's innocence; because his plea result from faulty advice.



As the United States Supreme Court in *Kimmelman v. Morrison*, 477 U.S. 365, 378, 41, L.Ed.2d 305, 321, 106 S.Ct. 2574 (1986) State: "A layman will ordinarily be unable to recognize Counsel's errors and to evaluate Counsel's professional performance, consequently a criminal defendant will rarely know that he has not been represented competently until after trial or appeal, usually when he consults another lawyer about his case. Indeed, an accused will often not realize that he has a meritorious ineffectiveness claim until he begins collateral review proceedings, particularly if he retained trial Counsel on direct appeal." *Id.* (citations omitted). Like, Ali, petitioner was not qualified to know or understand whether he had been represented competently at the time he answered these questions in Sept 28, 2004, having about part of his Constitutional Rights.

An evidentiary hearing required because petitioner alleged that his attorney misrepresented the degree of the offense to which petitioner pled guilty or no and that he did not understand he pled guilty to, and the record does not resolve the disputed facts based on attorney-client communication; *Holmes v. United States*, 878 F.2d 1545 (11th Cir. 1989). At the same time, Ali was deprived of his right to cross-examine Counsel, in violation of the sixth Amendment. See, *Henderson v. Morgan*, 426 U.S. 637, S.Ct. L.Ed 108 (1976) *Smith v. O'Grady*, 312 U.S. 329, S.Ct. 572 L.Ed. 859 (1941)



The conviction and sentence is unconstitutional because petitioner did not receive effective assistance of Counsel as guaranteed by the Sixth Amendment of the United States Constitution and part (1) article (15) of the State of N.H. Constitution.

In this case, Attorney Helen Sullivan, esq., Aileen O'Connell, esq from the "N.H.-P.D" office and Anthony L. Intricase, committed several unprofessional errors and omissions that amounted to performance below an objective standard of reasonableness for Counsel's in a criminal case.

There is a reasonable probability that except for the attorney's unprofessional errors, the result of the proceeding would have been different.

In petitioner's case, in order to prove the crime of violation of restraining order, the state would have been required to prove beyond a reasonable doubt that petitioner unlawfully called his victim in question with intent to commit an offense punishable by imprisonment.

Thus, the question before this Court is whether after viewing any evidence in light most favorable to the state, any rational trier of fact could have found beyond a reasonable doubt that petitioner made the unlawful "phone call" and that he did so with the intent to commit a crime or violation.

Review of the evidence in petitioner's case reveals (1) that he did not know that he had a restraining order against him (2)



Superior Court Justice Conway, Philip Mangones' did not have sufficient allegation of fact to support the issuance of ex-parte temporary protective order to the plaintiff (3)

the RSA 173-B:5 require that a trial Court must make a specific finding of a criminal conduct in order to issue a final restraining order against petitioner.

With respect to this Court, there was no finding, no assault no injury or any kind of criminal act by the petitioner. Ex 4 of 10 and 5 of 10 that there was no evidence provided during trial by the state and it had no witness. The case was dismissed and so should the protective order by law. See: Ali v. Nagy, Manchester District Court, 2008.

petitioner was held in the County Jail for 20 days and the Court violates petitioner due process of law the 14th Amendment when it issue these final protective order with out petitioner and deprived him of his right to free his accuser and cross-examine his victim who lied! and its in violation of sixth Amendment. And the trial Court prejudiced petitioner's case, is unreliable or fundamentally unfair outcome of the proceeding. And so as these incompetent attorney's.

## CONCLUSION

Petitioner Dominic Ali, has been deprived of basic fundamental rights guaranteed the 5th, 6th, and the 14th Amendment of the United States Constitution and seek relief in this Court



IN The  
United States District Court  
District of N.H.

Petitioner: Dominic Ali

v-

Defendant: Edward Reilly, Warden  
State Prison N.H. NCF

Civil NO: 12-cv-185-JL

Petitioners motion to Vacate Entrance  
Indictment

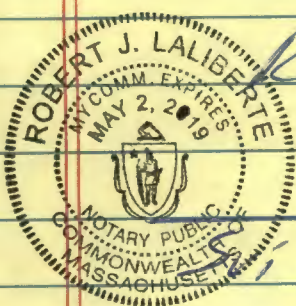
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Petitioner has a writ of Habeas Corpus  
doc No 11) Filed pursuant to 28 U.S.C. 2254  
with this Court claiming violation of his  
Constitutional Rights States and Federal.

Before this Court, is petitioner motion to  
Amend doc. No 27) his 2254 petition. which  
challenges the validity of his (2008) States  
Court conviction and sentence for the  
second degree assault. The motion seeks to  
add new allegations and legal argument  
relating to the existing claims (2(a) and  
2(b) and also adding two new claims or  
grounds for Federal habeas relief.



to restore those rights. Based on the argument and authorities presented herein, petitioner conviction and sentence was sustained in violation of due process and was deprived of his right to effective assistance of Counsel's in the Lower District Court and the Superior Court. Petitioner prays this Court will issue an order reverse the judgment of these Court.



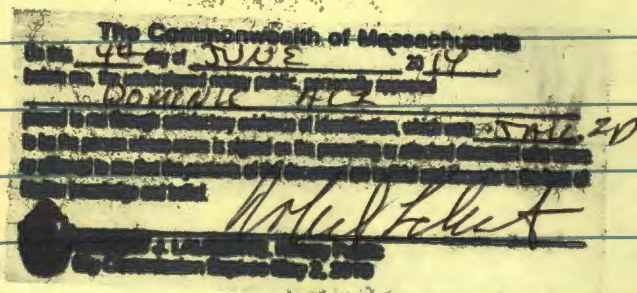
Respectfully Submitted,

*Phil Dominick*  
 Juris Representation

Dominick ATN 64554

P.C.C.F.

26 Long Pond Rd  
 Plymouth, MA 02360



### Certificate of Service

I, Dominic ATN, hereby certify under penalty of perjury, that these statements are true and a copy of this motion has been forwarded in the U.S. Mail first class postage address of the last known address of the NH-Department of Justice to this Court to N-smith,org June 25, 2014.